

AGRICULTURAL LIMING MATERIALS ACT

- Administration: This Act is administered by the Nebraska Department of Agriculture, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509. Telephone: (402) 471-2351.
- Revisions: The provisions of this Act were last revised during the 2015 session of the Nebraska Legislature. This reproduction was prepared following that session.
- Rules: A regulation has been adopted under this Act, known as Title 25, Chapter 12, Nebraska Administrative Code - Agricultural Liming Materials Regulations.

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2-4301. Act, how cited. Sections 2-4301 to 2-4327 shall be known and may be cited as the Agricultural Liming Materials Act.

2-4302. Definitions, where found. As used in the Agricultural Liming Materials Act, unless the context otherwise requires, the definitions in sections 2-4303 to 2-4318.01 shall apply.

2-4303. Agricultural liming material, defined. Agricultural liming material shall mean material which is distributed for agricultural purposes whose calcium and magnesium compounds are capable of neutralizing soil acidity, including limestone, burnt lime, hydrated lime, marl, an industrial byproduct, and agricultural lime slurry.

2-4304. Limestone, defined. Limestone shall mean a material consisting essentially of calcium carbonate or a combination of calcium carbonate with magnesium carbonate capable of neutralizing soil acidity.

2-4305. Burnt lime, defined. Burnt lime shall mean a material made from limestone which consists essentially of calcium oxide or a combination of calcium oxide with magnesium oxide.

2-4306. Hydrated lime, defined. Hydrated lime shall mean a material made from burnt lime which consists of calcium hydroxide or a combination of calcium hydroxide with magnesium oxide or magnesium hydroxide.

2-4307. Marl, defined. Marl shall mean a granular or loosely consolidated earthy material composed largely of seashell fragments and calcium carbonate.

2-4308. Industrial byproduct, defined. Industrial byproduct shall mean any industrial waste or byproduct containing calcium or calcium and magnesium in forms that will neutralize soil acidity.

2-4309. Brand, defined. Brand shall mean the term, designation, trademark, product name, or other specific designation under which individual agricultural liming material is offered for sale.

2-4310. Fineness, defined. Fineness shall mean the percentage by weight of the material which will pass standard sieves of specified sizes to be determined by the director pursuant to section 2-4319.

2-4311. Ton, defined. Ton shall mean a net weight of two thousand pounds avoirdupois.

2-4312. Bulk, defined. Bulk shall mean in a nonpackaged form.

2-4313. Label, defined. Label shall mean any written or printed matter on or attached to the package or on the delivery ticket which accompanies bulk shipments.

2-4314. Calcium carbonate equivalent, defined. Calcium carbonate equivalent shall mean the acid-neutralizing capacity of an agricultural liming material expressed as a weight percentage of calcium carbonate. The weight of water contained by the liming material shall be included when calculating the calcium carbonate equivalent.

2-4315. Weight, defined. Weight shall mean the weight of undried material as offered for sale.

2-4316. Agricultural lime slurry, defined. Agricultural lime slurry shall mean pulverized limestone suspended in water and which may contain up to two percent by weight of appropriate clay and surfactant to maintain the liming material in suspension.

2-4317. Department, defined. Department shall mean the Department of Agriculture.

2-4318. Director, defined. Director shall mean the Director of Agriculture.

2-4318.01. Manufacturer, distributor, retailer; defined. (1) Manufacturer shall mean a person who quarries, crushes, or grinds agricultural liming materials.

(2) Distributor shall mean one who sells agricultural liming material to any but the ultimate consumer.

(3) Retailer shall mean one who sells agricultural liming material to the ultimate consumer.

(4) Any person can be either a manufacturer, distributor, or seller, or any combination thereof, depending upon the function performed by such person in any given transaction.

2-4319. Rules and regulations. The department shall adopt, promulgate, and enforce such rules and regulations as may be necessary to carry out the provisions of the Agricultural Liming Materials Act pursuant to the Administrative Procedure Act.

The director shall adopt and promulgate rules and regulations relating to fineness as defined in section 2-4310 and he or she shall refer in adopting such rules and regulations to specifications used by national testing and materials organizations.

2-4320. Sale; label, statement, or delivery slip; information requirements. (1) Agricultural liming materials sold, offered, or exposed for sale in this state by any manufacturer, distributor, or retailer shall have affixed to each package in a conspicuous manner on the outside of such package a plainly printed, stamped, or otherwise marked label, tag, or statement or, in the case of bulk sales, a delivery slip, setting forth the following information:

(a) The name and principal office address of the manufacturer or distributor;

(b) The brand or trade name of the material;

(c) The identification of the product as to the type of the agricultural liming material;

(d) The net weight of the agricultural liming material;

(e) The minimum effective calcium carbonate equivalent, which is a percentage of weight function of calcium carbonate equivalent and fineness as prescribed by the rules and regulations of the director; and

(f) The pounds of effective calcium carbonate per ton.

Additional information may also be listed on the package including the minimum percentage by weight of calcium carbonate and magnesium carbonate.

(2) No information or statement shall appear on any package, label, delivery slip, or advertising matter which is false or misleading to the purchaser as to the quality, analysis type, or composition of the agricultural liming material.

(3) In the case of any material which has been changed in any way as to render inaccurate or misleading any of the information required by subsection (1) of this section subsequent to its packaging, labeling, or loading and before its delivery to the consumer, a plainly marked notice of the change shall be affixed by the manufacturer, distributor, or retailer to the package or delivery slip to identify the kind and degree of such change in such package.

(4) At every site from which agricultural liming materials are delivered in bulk and at every place where consumer orders for bulk deliveries are placed, there shall be conspicuously posted a copy of the statements required by subsections (1) and (3) of this section for each brand of material.

2-4321. Sale or offer for sale; restrictions. (1) No agricultural liming material shall be sold or offered for sale in this state unless it complies with the Agricultural Liming Materials Act or the rules and regulations promulgated pursuant to the act.

(2) No agricultural liming material shall be sold or offered for sale in this state which contains toxic materials in quantities injurious to plants or animals.

2-4322. Registration; license; when required; application; license fee. (1) Each separately identified agricultural liming material shall be registered before being distributed in this state. The person who first causes the distribution of the agricultural liming material into or within this state shall be responsible for compliance with the registration requirements of this section. The application for registration shall be submitted to the department on forms furnished and approved by the department. Upon approval by the department a copy of the registration shall be furnished to the applicant. All registrations shall expire on December 31 of the same year. Agricultural lime slurry as defined in section 2-4316 shall be exempt from the registration requirements of this section.

A person shall not be required to register any brand of agricultural liming material which is already registered pursuant to the Agricultural Liming Materials Act by another person.

(2) Any out-of-state manufacturer, distributor, or retailer who has no distribution facility within this state shall obtain a registration for its principal out-of-state office if it markets or distributes agricultural liming materials in the State of Nebraska.

(3) Every manufacturer, distributor, or retailer of agricultural liming materials to be distributed in this state shall file with the department an application for a license on or before January 1 of each year or prior to manufacture, distribution, or sale of such liming materials. Upon acceptance of the application and proper fee, the department shall issue a license for the current year. The annual license fee shall be five dollars and the license shall expire on December 31 of the same year.

2-4323. Retailer licensee;tonnage report; inspection fee; additional administrative fee; department; powers; director; duties. (1) Every retailer licensee shall file, not later than the last day of January and July of each year, a semiannual tonnage report on forms provided by the department, setting forth the number of net tons of each agricultural liming material sold in Nebraska during the preceding six-month period, which report shall cover the periods from July 1 to December 31 and January 1 to June 30, and such other information as the director shall deem necessary. All persons required to be licensed pursuant to the Agricultural Liming Materials Act shall file such report regardless of whether any inspection fee is due. Upon filing the report, such person shall pay the inspection fee at the rate prescribed pursuant to this section. The inspection fee shall be at the rate fixed by the director but not exceeding ten cents

per ton. The fee shall be set at an amount to cover the expenses of the inspection provided in section 2-4325 and the costs of administering this section. The minimum inspection fee required pursuant to this section shall be five dollars, and no inspection fee shall be paid more than once for any one product. In the case of agricultural lime slurry, the fee shall be paid on the base lime material only.

(2) If a person fails to report and pay the fee required by subsection (1) of this section by January 31 and July 31, the fee shall be considered delinquent and the person owing the fee shall pay an additional administrative fee of twenty-five percent of the delinquent amount for each month it remains unpaid, not to exceed one hundred percent of the original amount due. The department may waive the additional administrative fee based upon the existence and extent of any mitigating circumstances that have resulted in the late payment of such fee. The purpose of the additional administrative fee is to cover the administrative costs associated with collecting fees, and all money collected as an additional administrative fee shall be remitted to the State Treasurer for credit to the Fertilizers and Soil Conditioners Administrative Fund. Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided in this subsection shall constitute sufficient cause for the cancellation of all product registrations or licenses on file for such person.

(3) The director shall annually make information available in such form as he or she may deem proper concerning the tons of agricultural liming material sold in this state. Such report shall in no way divulge the operation of any registrant or licensee.

Source: Laws 2015, LB92, § 1. Operative Date: February 1, 2016

2-4324. Fees; disbursement. All fees paid to the department pursuant to the Agricultural Liming Materials Act shall be remitted to the State Treasurer for credit to the Fertilizers and Soil Conditioners Administrative Fund. All money credited to the fund shall be used by the department to aid in defraying expenses of administering the Agricultural Liming Materials Act and the Nebraska Commercial Fertilizer and Soil Conditioner Act.

Source: Laws 2015, LB92, § 2. Operative Date: August 30, 2015

2-4325. Director; enforcement of acts; inspections; testing; methods of analysis; results; distribution. (1) To enforce the Agricultural Liming Materials Act or the rules and regulations adopted pursuant to the act, the director may:

(a) For purposes of inspection, enter any location, vehicle, or both in which agricultural liming materials are manufactured, processed, packed, transported, or held for distribution during the normal business hours, except that in the event such locations and vehicles are not open to the public, the director shall present his or her credentials and obtain consent before making entry thereto unless a search warrant has previously been obtained. Credentials shall not be required for each entry made during the period covered by the inspection. The person in charge of the location or vehicle shall be notified of the completion of the inspection. If the owner of such location or vehicle or his or her agent refuses to admit the director to inspect pursuant to this section, the director may obtain a search warrant from a court of competent jurisdiction directing such owner or agent to submit the location, vehicle, or both as described in such search warrant to inspection;

(b) Inspect any location or vehicle described in this subsection, all pertinent equipment, finished and unfinished materials, containers and labeling, all records, books, papers, and documents relating to the distribution and production of agricultural liming materials, and other information necessary for the enforcement of the act;

(c) Obtain samples of agricultural liming materials. The owner, operator, or agent in charge shall be given a receipt describing the samples obtained; and

(d) Make analyses of and test samples obtained pursuant to subdivision (c) of this subsection to determine whether such agricultural liming materials are in compliance with the act.

For purposes of this subsection, location shall include a factory, warehouse, or establishment.

(2) Sampling and analysis shall be conducted in accordance with methods published by the AOAC International or in accordance with other generally recognized methods.

(3) The results of official analyses of agricultural liming materials and portions of official samples shall be distributed by the department as provided in the rules and regulations.

2-4326. Director; department; enforcement; orders; seizure of material; procedure.

(1) When the director has reasonable cause to believe agricultural liming materials are being sold in violation of the Agricultural Liming Materials Act or the rules and regulations adopted and promulgated pursuant to the act, he or she may issue and enforce a written or printed stop-sale, stop-use, or removal order to the owner or custodian of any lot of agricultural liming material. The department may order the owner or custodian to hold such material at a designated place when the department finds such material is being offered or exposed for sale by the owner or custodian in violation of the act or the rules and regulations. Such material shall be released when the act or the rules and regulations have been complied with, such violations have otherwise been legally disposed of in writing, and all costs and expense incurred in connection with such material's holding have been paid. This section shall not apply if the owner or custodian is the ultimate consumer of the agricultural liming material and he or she has title to such materials.

(2) Any agricultural liming materials not in compliance with the act or the rules and regulations shall be subject to seizure on complaint of the director to a court of competent jurisdiction in the area in which the agricultural liming materials are located. If the court finds the agricultural liming materials to be in violation of the act or the rules and regulations and orders the condemnation of the agricultural liming materials, such agricultural liming materials shall be disposed of in any manner consistent with the quality of the agricultural liming materials and the laws of the State of Nebraska. The court shall not order disposition without first giving the claimant an opportunity to apply to the court for release of the agricultural liming materials or for permission to process or relabel such product to bring it into compliance with the act.

Source: Laws 2015, LB92, § 3. Operative Date: August 30, 2015

2-4327. Violations; penalty; written warning; Attorney General or county attorney; duties; enforcement; appeal.

(1) Any person violating the Agricultural Liming Materials Act shall be guilty of a Class IV misdemeanor upon the first conviction thereof, and a Class II misdemeanor for each subsequent conviction thereof.

(2) Nothing in the act shall be construed to require the director or his or her duly authorized agent to report a violation in order to prosecute or to institute seizure proceedings as a result of minor violations of the act when he or she believes that the public interest will best be served by a suitable written warning to the violator.

(3) The Attorney General or the county attorney of the county in which any violation occurs or is about to occur, when notified by the department of such violation or threatened violation, shall pursue appropriate proceedings pursuant to section 2-4326 or this section or both without delay.

(4) In order to insure compliance with the act, the department may apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person

violating or threatening to violate the act or the rules and regulations adopted and promulgated pursuant to the act. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(5) Any person adversely affected by an action, order, or ruling made by the department pursuant to the act may appeal the action, order, or ruling, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 2015, LB92, § 4. Operative Date: August 30, 2015

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